

April 4, 2008

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUITElisabeth A. Shumaker  
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARGARET ETHEL LINNELL,

Defendant - Appellant.

No. 08-2077

(D.C. No. 1:07-CR-00282-MCA-1)

## ORDER

Before **TACHA, MURPHY** and **HARTZ**, Circuit Judges.

Margaret Ethel Linell is being prosecuted in the U.S. District Court for the District of New Mexico on charges of aiding and abetting tax fraud and attempting to interfere with the administration of tax laws. On March 4, 2008, the district court issued an order continuing a previously scheduled jury trial to a later date.

Using the name “Margaret Ethel Creditor” and acting without the benefit of counsel, the defendant was permitted to file a document captioned as a “Notice of Appeal and Leave to Proceed” which the district court construed as a notice of appeal from the rescheduling order. A preliminary record was transmitted to this court and we opened Case No. 08-2077.

In criminal cases, finality for purposes of creating appellate jurisdiction does not exist until both conviction and sentencing occur. United States v. Phelps, 17 F.3d 1334, 1336-37 & n. 10 (10th Cir. 1994). In this case, we have neither. There having been no final appealable order entered in the district court proceeding as yet, this attempted appeal is premature and is accordingly dismissed.

Entered for the Court  
ELISABETH A. SHUMAKER  
Clerk of Court

A handwritten signature in dark ink, appearing to read "D. Cressler", with a stylized flourish at the end.

by:  
Douglas E. Cressler  
Chief Deputy Clerk